

REPRESENTATIVE FOR PETITIONERS:

Kenneth W. Parks, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kim Carson, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|----------------------------|---|------------------|--------------------------|
| Kenneth W. & Judith Parks, |) | Petition No.: | 57-019-15-1-5-01427-16 |
| |) | | |
| Petitioners, |) | Parcel No.: | 57-07-27-400-085.000-019 |
| |) | | |
| v. |) | County: | Noble |
| |) | | |
| Noble County Assessor, |) | Township: | Wayne |
| |) | | |
| Respondent. |) | Assessment Year: | 2015 ¹ |

Appeal from the Final Determination of the
Noble County Property Tax Assessment Board of Appeals

February 22, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioners prove the subject property's 2015 assessment was incorrect?

¹The Petitioners listed 2016 as the assessment year under appeal on their Form 131, but the Form 130 and accompanying Form 115 indicate 2015 is the year. The Board noticed the hearing for 2015 and neither party objected. Accordingly, this Final Determination addresses only the 2015 assessment.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2015 appeal with the Noble County Assessor on September 11, 2015. On June 3, 2016, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the total assessment, but not to the level requested by the Petitioners. On June 27, 2016, the Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On October 13, 2016, the Board's administrative law judge (ALJ), Patti Kindler, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Petitioners Kenneth W. Parks and Judith Parks appeared *pro se*. Noble County Assessor Kim Carson appeared for the Respondent. Gavin Fisher was a witness for the Respondent. All of them were sworn and testified.
5. The Petitioners submitted the following exhibits:
 - Petitioners Exhibit 1: Letter from David Lange, Building Inspector/Director of Planning and Zoning for the City of Kendallville, dated July 17, 1998,
 - Petitioners Exhibit 2: Variance/Appeal Application for the property's septic system dated August 13, 1998,
 - Petitioners Exhibit 3: Newspaper article entitled, *Indiana farmland values continue to fall, report says*, from The News Sun dated August 13, 2016,
 - Petitioners Exhibit 4A: Newspaper article entitled *Noble County faces significant cuts*, from The News Sun dated August 16, 2016,
 - Petitioners Exhibit 4B: Newspaper article entitled *County Council will tackle budget crunch*, from The News Sun dated August 13, 2016,
 - Petitioners Exhibit 4C: Newspaper article entitled *Increase: To be used for public-safety expenses*, from The News Sun dated October 3, 2016,
 - Petitioners Exhibit 4D: Newspaper article entitled *Council Oks income tax for public safety*, from The News Sun dated October 4, 2016,
 - Petitioners Exhibit 4E: Newspaper article entitled *City workers on track to get pay raise*, from The News Sun dated October 5, 2016,
 - Petitioners Exhibit 5: TS-1A, Special Message to Property Owner for 2012 and 2013,
 - Petitioners Exhibit 6A: Aerial map of the subject property,

- Petitioners Exhibit 6B: Aerial map of the subject property indicating “wet and dry areas,”
- Petitioners Exhibit 6C: Photograph of water standing on the subject property,
- Petitioners Exhibit 6D: Photograph of water standing on the subject property.

6. The Respondent submitted the following exhibits:

- Respondent Exhibit 1: Market value worksheet on sales; linear regression graph; comparable sales chart,
- Respondent Exhibit 2: September 19, 2016, e-mail from Ms. Carson to Barb Anderson; May 8, 2014, letter with aerial map from Ms. Anderson to Kent Clark,
- Respondent Exhibit 3: Aerial map of the subject property with the wetlands highlighted in green, the 2015 subject property record card, and the Noble County soil productivity report,
- Respondent Exhibit 4: Two photographs of the subject property,
- Respondent Exhibit 5: E-mail between Mr. Lange and Ms. Miller dated September 19, 2016,
- Respondent Exhibit 6: 2015 subject property record card.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Hearing notice dated September 8, 2016,
- Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a 2.25-acre lot including a cabin located at 1204 North Riley Road in Kendallville.

9. The PTABOA determined the 2015 total assessment is \$27,800 (land \$16,800 and improvements \$11,000).

10. On their Form 131, the Petitioners requested a total assessment of \$16,000 (land \$5,000 and improvements \$11,000).

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax

exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

12. The subject property's land assessment is too high. This particular lot is located in a "wetland area." At times, the lot is inaccessible and unusable because of high water. Standing water exists every spring and sometimes "has persisted throughout the summer." When the land was purchased, it was "so overgrown that they could not get through it." After purchase, the land was "cleared" by hand tools because the ground was too soft for heavy equipment. An aerial map indicates only a small area of "dry land" is present. This "dry area" is where the cabin is situated. *K. Parks argument; Pet'rs Ex. 6A, 6B, 6C, 6D.*
13. The land assessment increased from \$1,000 in 2014 to \$16,800 in 2015. According to the Respondent, the prior land assessments had fallen "through the cracks and were finally corrected." The Petitioners agree with the assessment of the "shed-type building" or "cabin," but argue the land assessment is excessive. *K. Parks argument; Pet'rs Ex. 5.*
14. Sometimes "circumstances" cause a piece of "flood-prone land" to sell for a higher price. Although Mr. Fisher included "wetland and flooded land" sales in his analysis, some buyers are "willing to pay more for that type of land for hunting purposes or to rent to hunters." The subject property is not utilized for hunting purposes. Accordingly, the sales utilized by Mr. Fisher may not be a good indication of what the land is worth. *K. Parks argument (referencing Resp't Ex. 1).*
15. In the past, the Petitioners attempted to obtain several building permits. The Kendallville Planning and Zoning Director informed the Petitioners that building on the lot would be "very costly and they would have to file for extra permits before they would be approved to build on the flood-prone parcel." According to a letter dated April 22, 2016, the lot

“would be considered an unbuildable parcel as defined by the Zoning Code of Kendallville due to the practical difficulties.” The Noble County Health Department also denied the Petitioners’ request for a variance for the construction of a septic system on August 13, 1998. For these reasons, the Petitioners decided not to pursue the idea of building a home on the property. *K. Parks testimony; Pet’rs Ex. 1, 2.*

16. According to local newspaper articles, the value of farm land has declined by “8.2% to 8.7%” depending on the land quality. Meanwhile, the subject property’s land assessment, “located in a floodplain,” has increased exponentially. *K. Parks testimony; Pet’rs Ex. 3.*
17. Various news articles point to some of the “possible reason for tax increases.” For example, Albion Health Insurance spending is “draining Noble County Government’s reserve” and Noble County is “tweaking its coverage for employees” due to significant budget cuts. Another article points to Noble County approving another income tax to be used for “public safety purposes.” Finally, a recent article states “city workers are on track to get pay raises.” *K. Parks testimony; Pet’rs Ex. 4A, 4B, 4C, 4D, 4E.*

RESPONDENT’S CONTENTIONS

18. The subject property is correctly assessed. In fact, the 2015 land assessment is lower than the amount derived from an analysis prepared by Mr. Fisher, a Level III Assessor/Appraiser and licensed residential appraiser. *Carson argument; Fisher argument; Resp’t Ex. 1.*
19. In his analysis, Mr. Fisher relied on eleven vacant land sales in the vicinity of Round Lake and Little Long Lake. He calculated the value per square foot of the subject property because it is essentially an “island” and its additional frontage does not necessarily make the land more valuable. Mr. Fisher constructed a linear regression of the sold properties’ values, indicating the law of diminishing marginal utility applies. Based on the regression, the appropriate land value for the subject property, unencumbered without any restrictions, would be approximately \$1.50 per square foot, or \$147,000. *Fisher testimony; Resp’t Ex. 1.*

20. Next, Mr. Fisher sought to determine the value reduction applicable to the “wet soil and flooding.” He relied on a sales analysis with four sales encumbered by wetlands, river bottoms, and swamps. The loss in value to the comparable lots from those factors ranged from 63% to 71%. He settled on an amount of 70%. This adjustment reduced the indicated land value to \$44,100. The Respondent is not seeking an increase, even though the current land assessment is only \$16,800. *Fisher testimony; Resp’t Ex. 1.*
21. The Respondent does not dispute the fact that a home could not be built on the lot, but the Petitioners failed to present any evidence of the subject property’s market value-in-use. Further, the Petitioners failed to indicate the “loss of value” to the property due to the wet soil and flooding. Thus, the Petitioners failed to meet their burden of proof. *Fisher argument.*

BURDEN OF PROOF

22. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
23. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
24. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing

authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.

25. The parties agree the total assessment increased from \$1,000 in 2014 to \$27,800 in 2015.² But the Respondent testified the assessment increased because “physical changes” were made to the property. The record indicates a new structure was added to the property for the 2015 assessment.
26. Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the *same property* increases by more than 5%. In this case, because a structural improvement was added between 2014 and 2015, there is an exception to the burden-shifting rule. *See* Ind. Code § 6-1.1-15-17.2(c)(1). Based on the fact that a new structure was erected, the ALJ made a preliminary determination that the 2015 property was not the *same property* as it was in 2014 for purposes of Ind. Code § 6-1.1-15-17.2(c)(1). Therefore, the burden remains with the Petitioners. The Board adopts the ALJ’s preliminary decision and finds the burden remains with the Petitioners.

² While the Petitioners contend their appeal was of the land assessment only, neither party raised the argument that the burden-shifting statute should be applied only to the increase in the land assessment. On several occasions, the Board has addressed whether Ind. Code § 6-1.1-15-17.2, can be applied piecemeal to only land assessments or only improvement assessments, or whether that statute must be applied to the whole property. The Board has repeatedly held that the statute does not contemplate piecemeal approaches, but was intended to apply to an entire “economic unit.” *See Vern R. Grabbe v. Carroll Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. Nos. 08-002-10-1-1-00001, et al. (May 10, 2012); *Rebecca Budreau v. White Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. Nos. 91-020-08-1-5-00058, et al. (July 30, 2012); *Waterford Dev. Corp. v. Elkhart Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. Nos. 20-015-08-1-4-00241, et al. (September 25, 2012); *Mac’s Convenience Stores, LLC v. Hamilton Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. No. 29-006-12-1-4-02050 (November 14, 2014).

ANALYSIS

27. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
28. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
29. Here, the Petitioners are only disputing the 2015 land assessment. The Petitioners agree the improvements are correctly assessed. The crux of the Petitioners' argument is that their land is overvalued because it is "a wetland, at times inaccessible and unusable, and is unbuildable because of high water." While these claims are mostly undisputed and these factors are relevant, the Petitioners were required to offer evidence indicating how these factors affect the property's market value-in-use. The Petitioners provided letters, e-mails, photographs, and newspaper articles in support of their position, but these items are not enough to prove that the assessment was made in error. The factors pointed out by the Petitioners are likely detrimental to the subject property's value, however they do not establish that the assessment is incorrect. The Petitioners failed to offer anything to quantify their actual effect, or to quantify a more accurate value. The Petitioners needed to offer probative evidence that establishes the effect these factors have on the property's market value-in-use as of the relevant valuation date. Without more, the Petitioners' evidence is not enough to make a prima facie case for changing the assessment.

30. The Petitioners claim the land assessment should not have increased from \$1,000 in 2014 to \$16,800 in 2015. Their conclusory testimony, however, does not help to prove a more accurate valuation. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
31. Finally, the Petitioners made several arguments regarding their taxes, tax increases and local government spending in general. These points are not relevant to the valuation question.
32. Furthermore, the Board lacks jurisdiction to hear general claims that a petitioner's taxes are too high. The Board is a creation of the legislature and only has power as conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). Indiana Code §6-1.5-4-1 gives the Board authority to consider appeals concerning assessed valuations, deductions, exemptions, and credits. The Board has no authority to address general disputes over taxes or tax rates.
33. The Petitioners failed to make a prima facie case that the 2015 assessed value is incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003). While the Respondent presented evidence that the property is currently under-assessed, the Respondent explicitly stated she was not requesting an increase to the assessment.

SUMMARY OF FINAL DETERMINATION

34. In accordance with these findings and conclusions, the 2015 assessment will not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.